

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-01266-TWP-DML
)	
BUTLER UNIVERSITY, JAMES M.)	
DANKO, LEVESTER JOHNSON,)	
STACIE COLSON PATTERSON,)	
ANNE FLAHERTY, SALLY CLICK,)	
ERIN MCCLUNEY, ROBERT PADGETT,)	
MARTHA DWIZLIK, and JANE SMITH,)	
)	
Defendants.)	
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)	
UNITRIN PREFERRED INSURANCE)	
COMPANY,)	
)	
Intervenor Plaintiff,)	
)	
v.)	
)	
JANE SMITH and JOHN DOE,)	
)	
Intervenor Defendants.)	

ORDER GRANTING DEFENDANTS’ PARTIAL MOTION TO DISMISS

This matter is before the Court on a Partial Motion to Dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6) by the individual Defendants James Danko, Levester Johnson, Stacie Colson Patterson, Anne Flaherty, Sally Click, Erin McCluney, Robert Padgett, and Martha Dwizlik (collectively “Individual Defendants”) ([Filing No. 64](#)). On August 9, 2016, Plaintiff “John Doe” filed his Amended Complaint, asserting various claims against the Individual Defendants, “Jane Smith,” and Butler University ([Filing No. 13](#)). Among the claims asserted against the Individual Defendants is a claim for violation of 20 U.S.C. § 1681 (“Title IX”), which provides

that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” ([Filing No. 13 at 22–23.](#))

The Individual Defendants filed their Partial Motion to Dismiss, asking the Court to dismiss the Plaintiff’s Title IX claim against them on the basis that Title IX does not permit lawsuits against school officials, teachers, employees, or other individuals. They explain that the Supreme Court analyzed the substantive rights provided by Title IX and held that, although Title IX applies to institutions and programs that receive federal funds, the statute “has consistently been interpreted as not authorizing suit against school officials, teachers, and other individuals.” *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009). Each of the Individual Defendants is a current or former school official/employee of Butler University. Because a Title IX claim can be brought against the University only, and not its officials or employees, the Individual Defendants argue that the Plaintiff’s Title IX claim against them must be dismissed.

The Plaintiff responds,

Based upon the case law cited in the individual BUTLER Defendants’ Memorandum of Law [Dkt. 65], as well as research conducted independently by undersigned counsel, it appears that their motion is well-founded, and therefore, Plaintiff does not file any response in opposition to their motion.

. . . [B]ased on the argument and authorities cited above, Plaintiff JOHN DOE respectfully informs this Honorable Court that he has NO objection to the granting of Defendants’ Partial Motion to Dismiss. [Dkt. 64].

([Filing No. 70 at 2–3.](#))

Upon review of the authority cited by the Individual Defendants, and based upon their argument and the Plaintiff’s agreement with the Individual Defendants’ position, the Court determines that dismissal of the Title IX claim against the Individual Defendants is appropriate. There are no set of facts that would allow the Plaintiff to pursue this claim against the Individual

Defendants, and thus, the Court concludes that, pursuant to Rule 12(b)(6), the Partial Motion to Dismiss for failure to state a claim upon which relief can be granted ([Filing No. 64](#)) must be and hereby is **GRANTED**. Count IV of the Amended Complaint is **dismissed with prejudice** as to Defendants James Danko, Levester Johnson, Stacie Colson Patterson, Anne Flaherty, Sally Click, Erin McCluney, Robert Padgett, and Martha Dwizlik.

SO ORDERED.

Date: 3/21/2018



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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